MUSABYIMANA v BANKI OF KIGALI LTD

[Rwanda URUKIKO RW’UBUJURIRE – RCOMA 00008/2021/CA (Ngagi, PJ) 10 Kamena 2022]

Amategeko agenga imanza z'ubucuruzi-imanza z'ubucuruzi – Inguzanyo ya Banki – Ubwishyu – Cyamunara – Iyo ingwate itejwe cyamunara umwenda wose nti wishyurwe nta kibuza uberewemo umwenda gukurikirana ubwishyu ku yindi mitungo – Urimo umwenda ntashobora kwitwaza ko ingwate yari ifite agaciro ko hejuru ngo areke kwishyura mu gihe cyose cyamunara itigeze iteshwa agaciro.

Incamake y’ikibazo: BANK OF KIGALI Ltd yagiranye amasezerano y’umwenda na NZABARINDA Jean Pierre n’umugore we MUSABYIMANA Spéciose, batanga ingwate y’inzu. Uwo umwenda wagombaga kwishyurwa mu gihe cy’amezi 60. Bananiwe kwishyura umwenda, BK Ltd yagurishije ingwate bayihaye kugira ngo yiyishyure uwo mwenda, nyuma yo kubona ko umwenda wose utishyuwe, BK Ltd yatanze ikirego mu Rukiko Rukuru rw’Ubucuruzi, irusaba kubategeka kwishyura umwenda usigaye. Urukiko Rukuru rw’Ubucuruzi rwaciye urubanza, rwemeza ko ikirego cyatanzwe na BK Ltd gifite ishingiro, rutegeka NZABARINDA Jean Pierre n’umugore we MUSABYIMANA Spéciose gufatanya kwishyura BK Ltd.

MUSABYIMANA Spéciose na NZABARINDA Jean Pierre basubirishijemo urubanza, ku mpamvu z’uko batarumenyeshejwe bigatuma bavutswa uburenganzira bwo kwiregura ku byo BK Ltd yabaregaga, maze Urukiko rusanga koko bataramenyeshejwe urubanza No RCOM 0184/12/HCC. Urukiko Rukuru rw’Ubucuruzi rwaciye urubanza N° RCOM 00017/2020/HCC, rwemeza ko urubanza N° RCOM 0184/12/HCC ruteshejwe agaciro, rutegeka NZABARINDA Jean Pierre na MUSABYIMANA Spéciose kwishyura BK Plc umwenda. MUSABYIMANA Spéciose ajuririra urwo rubanza mu Rukiko rw’Ubujurire avuga ko batagombaga gutegekwa kwishyura kuko ingwate bari baratanze yari ihagije kwishyura umwenda wose bari bafitiye BK Plc.

Incamake y’icyemezo: 1. Gutanga ingwate no kwishyura umwenda ni ibintu bibiri bitandukanye, ariyo mpamvu ingwate igurishwa kugira ngo amafaranga avuyemo abashe kwishyura umwenda, mu gihe iguzwe amafaranga make atakwishyura umwenda wose, ubwishyu bugashakirwa no mu yindi mitungo y’ubereyemo Banki umwenda.

2. Urimo umwenda ntashobora kwitwaza ko ingwate yari ifite agaciro ko hejuru ngo areke kwishyura mu gihe cyose cyamunara itigeze iteshwa agaciro.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Rwemeje ko imikirize y’urubanza rwajuririwe ihindutse gusa kuri Frw.

Amategeko yashingiweho:
Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 111 na 9.
Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 140.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Imanza zifashishizwe:

Urubanza UWAMAHORO Florent de la Paix & Arlcom Ltd v ECOBANK RWANDA Ltd; Nº RCOMAA 0020/15/CS, , rwaciwe ku wa 21/05/2018.

Urubanza BRD Plc v RUTAGANDA Viateur na UWANTEGE Odette; Nº RCOMAA 00007/2020/CA.

Inyandiko z'abahanga:

Philippe MALAURIE na Laurent AYNES, *Droit des sûretés*, 13ème édition, Paris 2019, pp. 428-429.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 11/02/2010, BANK OF KIGALI Ltd yagiranye amasezerano y'umwenda wa 50.000.000 Frw na NZABARINDA Jean Pierre n'umugore we MUSABYIMANA Spéciose, batanga ingwate y'inzu yabo ibaruye kuri UPI:5/01/10/01/9 ifite agaciro ka 252.474.861 Frw. Uwo umwenda wagombaga kwishyurwa mu gihe cy'amezi 60, hishyurwa 1.255.881 Frw buri kwezi. Iyo nguzanyo yatanzwe mu byiciro nk'uko impande zombi zabyumvikanyeho, aho ku cyiciro cya mbere bahawe 25.000.000 Frw, nyuma yuko BANK OF KIGALI Ltd isuye iyo ingwate yongera kubaha 25.000.000 Frw ku cyiciro cya kabiri.

[2] NZABARINDA Jean Pierre na MUSABYIMANA Spéciose bananiwe kwishyura umwenda, BK Ltd ibandikira amabaruwa atandukanye ibihanangiriza, harimo ibaruwa yo ku wa 13/07/2010, iyo ku wa 17/11/2010, n'iyo ku wa 03/03/2011. Ku wa 01/11/2011, BK Ltd yagurishije ingwate bayihaye kugira ngo yiyishyure uwo mwenda, ivamo 25.100.000 Frw, hakurwamo 1.255.000 Frw y'igihembo cya *Receiver*, BK Ltd yishyurwa 23.845.000 Frw akurwa mu mwenda wari umaze kungana na 55.803.611 Frw hasigara 31.958.611 Frw nk'uko bigaragazwa na *historique bancaire* yo kuva ku wa 01/03/2010 kugeza ku wa 31/12/2014.

[3] Nyuma yo kubona ko umwenda wose utishyuwe, ku wa 05/09/2012, BK Ltd yareze NZABARINDA Jean Pierre na MUSABYIMANA Spéciose mu Rukiko Rukuru rw'Ubucuruzi, ikirego cyayo cyandikwa kuri N° RCOM 0184/12/HCC, irusaba kubategeka kwishyura umwenda usigaye ungana na 31.958.611 Frw. Ku munsi w'iburanisha NZABARINDA Jean Pierre na MUSABYIMANA Spéciose ntibitabye Urukiko, uhagarariye BK Ltd asaba ko urubanza ruburanishwa badahari, maze Urukiko Rukuru rw'Ubucuruzi rushingiye ku ngingo ya 59 y'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ryakurikizwaga muri icyo gihe, iteganya ko: "*Iyo mu iburanisha rya mbere uregwa atitabye nta mpamvu, urega ashobora gusaba ko urubanza rwimurirwa ku yindi tariki cyangwa se gusaba ko ruburanishwa uregwa adahari. Muri icyo gihe hasuzumwa imyanzuro y'urega kandi ikirego cye kikakirwa, kigahabwa ishingiro iyo gifite ireme*

kandi cyaratanzwe mu buryo no mu nzira bikurikije amategeko", rwemeza ko iburanisha rikorwa badahari kuko bahamagajwe mu buryo bukurikije amategeko ariko ntibitabe nta mpamvu.

[4] Ku wa 11/10/2012, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOM 0184/12/HCC, rwemeza ko ikirego cyatanzwe na BK Ltd gifite ishingiro, ko NZABARINDA Jean Pierre na MUSABYIMANA Spéciose batsinzwe, rubategeka gufatanya kwishyura BK Ltd 42.619.114 Frw, akubiyemo umwenda remezo n'inyungu z'ubukererwe, gufatanya kwishyura umusogongero wa Leta wa 1.704.765 Frw hamwe na 6.600 Frw y'amagarama y'urubanza.

[5] MUSABYIMANA Spéciose na NZABARINDA Jean Pierre basubirishijemo urubanza No RCOM 0184/12/HCC, ku mpamvu z'uko batarumenyeshejwe bigatuma bavutswa uburenganzira bwo kwiregura ku byo BK Ltd yabaregaga, ikirego cyabo cyandikwa kuri N° RCOM 00017/2020/HCC. Mbere yo gusuzuma urubanza mu mizi, Urukiko rwasuzumye niba impamvu yo gusubirishamo urubanza batanze ifite ishingiro, maze rusanga koko MUSABYIMANA Spéciose na NZABARINDA Jean Pierre bataramenyeshejwe urubanza No RCOM 0184/12/HCC.

[6] Ku wa 28/06/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza N° RCOM 00017/2020/HCC, rwemeza ko ikirego cyatanzwe na NZABARINDA Jean Pierre na MUSABYIMANA Spéciose gifite ishingiro, rwemeza ko urubanza N° RCOM 0184/12/HCC ruteshejwe agaciro, rutegeka NZABARINDA Jean Pierre na MUSABYIMANA Spéciose kwishyura BK Plc umwenda wa 22.948.611 Frw, rutegeka BK Plc kwishyura NZABARINDA Jean Pierre na MUSABYIMANA Spéciose 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka, no kubasubiza 40.000 Frw y'amagarama bishyuye barega.

[7] Nyuma y'uko urubanza N° RCOM 00017/2020/HCC ruciwe ku wa 28/06/2021, ku wa 16/07/2021 NZABARINDA Jean Pierre yarapfuye nk'uko bigaragazwa n'inyandiko mpine y'uwapfuye yatanzwe n'ibitaro bya CHUK, ku wa 27/07/2021, MUSABYIMANA Spéciose ajuririra urwo rubanza muri uru Rukiko avuga ko batagombaga gutegekwa kwishyura 22.948.611 Frw kuko ingwate bari baratanze yari ihagije kwishyura umwenda wose bari bafitiye BK Plc, asaba kugenerwa indishyi z'igihombo bagiza n'indishyi z'ibyagiye ku rubanza bagenewe mu rubanza rujuririrwa zikiyongera, ubujurire bwe bwandikwa kuri N° RCOMA 00008/2021/CA.

[8] Urubanza rwahamagawe ku wa 04/05/2022, ariko ntirwaburanishwa kubera ko Me MUTUGA MASUMBUKO, uhagarariye MUSABYIMANA Spéciose, yari arwaye, rwimurirwa ku wa 16/05/2022, kuri uwo munsi nabwo rwimurirwa ku wa 24/05/2022 kuko yari akirwaye. Ku wa 24/05/2022, urubanza ruburanishwa mu ruhame, MUSABYIMANA Spéciose ahagarariwe na Me MUTUGA MASUMBUKO, naho BANK OF KIGALI Plc ihagarariwe na Me RUSANGANWA Jean Bosco.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. UBUJURIRE BWA MUSABYIMANA Spéciose

1.Gusuzuma niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga gutegeka Nzabarinda Jean Pierre na Musabyimana Spéciose kwishyura BK Plc umwenda wa 22.948.611 Frw.

[9] Uhagarariye MUSABYIMANA Spéciose avuga ko ingwate batanze yari ihagije kwishyura umwenda MUSABYIMANA Spéciose n'umugabo we NZABARINDA Jean Pierre bari barafashe muri BK Ltd, ko kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko gusubirishamo urubanza kwabo gufite ishingiro bisobanuye ko ibintu byasubiye uko byari bimeze, bityo ko nta mafaranga MUSABYIMANA Spéciose n'umugabo we NZABARINDA Jean Pierre bagombaga gutegekwa kwishyura BK Plc, ko nta n'inyungu zagombaga gukomeza kubarwa kuko iyo cyamunara ibaye amasezerano y'inguzanyo impande zombi zari zifitanye aba asheshwe, ariko ko BK Plc yabirenzeho igakomeza kubara inyungu mu buryo budasobanutse.

[10] Asobanura ko MUSABYIMANA Spéciose n'umugabo we NZABARINDA Jean Pierre basabye inguzanyo muri BK Ltd, batanga ingwate ifite agaciro ka 252.474.861 Frw, bagamije kongerera agaciro uwo mutungo watanzweho ingwate, ko nyuma baje kugira impanuka bigatuma badashobora kwishyura neza, ariko ko amasezerano impande zombi zagiranye yateganyaga ko mu gihe habayeho kunanirwa kwishyura, ubwishyu bwavanwa mu ngwate yatanzwe. Ko kandi nubwo bene umutungo batamenyeshejwe ibijyanye na cyamunara ariko ko nta mpungenge byari bibateye, kuko bari bizeye ko agaciro ingwate yari ifite kangana na 252.474.861 Frw nk'uko kemejwe na RDB karutaga umwenda, ariko ko batunguwe nuko BK Plc yafashe indi mitungo yahoze ari iya NZABARINDA Jean Pierre yagurishije abandi bantu, hategerejwe gukorwa ihinduza mutungo (mutation) ikayiteza cyamunara, umwe ukagurishwa 6.000.000 Frw, undi 3.100.000 Frw, ndetse hakaba hakiri urubanza kuri iyo mitungo rukiburanishwa, ko ari naho bamenyeye ko umwenda wari ugeze kuri 55.803.611 Frw, ko n'ingwate yagurishijwe 25.100.000 Frw.

[11] Avuga kandi ko icyo banenga urubanza rujuririrwa ari uko rutitaye ku gaciro k'umutungo batanzeho ingwate, ko rero icyemezo cy'Urukiko gitegeka NZABARINDA Jean Pierre na MUSABYIMANA Spéciose kwishyura 22.948.611 Frw y'umwenda wari usigaye nta shingiro gifite, kubera ko ingwate bari batanze yari ifite agaciro ka 252.474.861 Frw, gakubye inshuro zigera kuri 6 umwenda bahawe wa 50.000.000 Frw, bikaba bigaragara ko yagombaga kwishyura umwenda hakanasigara amafaranga menshi bari gusubizwa. Avuga ko ntaho BK Plc yagombaga guhera itesha agaciro ingwate yahawe, ngo itandukire igurishe n'imitungo itari iyabo, bikaba bitumvikana ukuntu yakomeje kubishyuza, hashingiwe ku ihame "*Nemo auditur propriam turpitudinem allegans*". Abajijwe uko bigenda mu gihe ingwate igurishijwe ariko amafaranga ayivuyemo ntabashe kwishyura umwenda wose, avuga ko icyo gihe ufite umwenda yongeraho andi.

[12] Uhagarariye BK Plc yireguye kuri iyi mpamvu y'ubujurire avuga ko nta shingiro yahabwa, kubera ko mu bisobanuro MUSABYIMANA Spéciose atanga, avuga ibijyanye na cyamunara yakozwe ku ngwate yatanzwe ku mwenda yahawe, ashaka kugaragaza ko atayimeyeshejwe, n'ibijyanye no kuba iyo ngwate yarateshejwe agaciro, kandi mu rubanza rujuririrwa nta ngingo irebana na cyamunara yaregewe, ahubwo hararegewe «Umwenda wasigaye ungana na 31.958.611 Frw, inyungu zingana na 10.160.503 Frw zabazwe ku wa 18/04/2012 ariko zikomeza kubarwa kugeza igihe umwenda wose uzishyurirwa, ibigenda ku rubanza bingana na 1.000.000 Frw, habariwemo n'igihembo cya Avoka», ko rero ibijyanye no guhagarika cyangwa gusesa cyamunara

MUSABYIMANA Spéciose yazabiregera mu kirego cyihariye, kuko atagomba guhindura icyaregewe na cyane ko mu gika cya 12 cy'urubanza rujuririrwa yiyemereye umwenda.

[13] Avuga kandi ko MUSABYIMANA Spéciose yitiranya amasezerano y'umwenda *(contrat principal)* n'amasezerano y'ingwate *(contrat accessoire*) kuko kuba amafaranga yavuye muri cyamunara ataravuyemo ubwishyu bw'umwenda wose, bidasobanura ko umwenda wishyuwe wose. Bityo ko yakagombye kwerekana niba koko umwenda warishyuwe wose n'uburyo wishyuwemo, kuko gutanga ingwate bidasobanura ko uwafashe umwenda aba awishyuye wose, ko ari yo mpamvu habaho cyamunara, havamo amafaranga menshi arenze umwenda, uwawufashe agasubirana amafaranga asigaye nyuma yo kwishyura umwenda, haramuka havuyemo amafaranga make atakwishyura umwenda nyuma ya cyamunara, hagashakishwa uburyo bwo kuwishyura.

[14] Akomeza avuga ko MUSABYIMANA Spéciose nta bimenyetso agaragaza by'uko umwenda yarezwe yawishyuye, akaba adashobora kuvuguruza ibyo Urukiko Rukuru rw'Ubucuruzi rwashingiyeho mu gika cya 13, icya 14 n'icya 15 by'urubanza rujuririrwa mu kumutegeka kwishyura BK Plc umwenda ungana na 22.948.611 Frw, bityo ubujurire bwe bukaba butagomba guhabwa ishingiro.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 3, igika cya mbere, y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ibikurikira: "*Buri muburanyi agomba kugaragaza ukuri kw'ibyo abura*na." Ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nayo iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda.

[16] Dosiye y'urubanza igaragaramo ibaruwa NZABARINDA Jean Pierre yandikiye Umuyobozi Mukuru wa Banki ya Kigali Ltd ku wa 29/12/2009 asaba inguzanyo ya 50.000.000 Frw azishyura mu gihe cy'amezi 60 kugira ngo arangize inyubako mu mushinga MUYUMBU GREEN HILL MOTEL Ltd, no kugura ibikoresho byayo. Igaragaramo kandi ibaruwa Banki ya Kigali Ltd yandikiye NZABARINDA Jean Pierre ku wa 11/02/2010 imumenyesha ko yemerewe inguzanyo ya 50.000.000 Frw, ayishiraho umukono ku wa 18/02/2010. Igaragaramo na none amasezerano y'inguzayo impande zombi zashyizeho umukono ku wa 11/02/2010 n'amasezerano yo kwishingira (caution) yakozwe na MUSABYIMANA Spéciose ku wa 02/03/2010, aho yishingira NZABARINDA Jean Pierre ku mwenda wa 50.000.000 Frw n'inyungu zayo.

[17] Dosiye y'urubanza igaragaramo ibaruwa ya RDB yo ku wa 01/11/2011 yemeza raporo ya cyamunara (*Aproval of Auction report*), igaragaza ko umutungo watejwe cyamunara ku mafaranga 25.100.000 Frw, hakurwamo 1.255.000 Frw y'igihembo cy'ushinzwe gucunga ingwate (*receiver*), hasigara 23.845.000 Frw. Igaragaramo kandi *historique bancaire* ya konti ya NZABARINDA Jean Pierre yo kuva ku wa 01/03/2010 kugeza ku wa 31/12/2014. Iyo *historique bancaire* igaragaza ko ku wa 09/03/2010 yahawe inguzanyo ya 25.000.000 Frw, ku wa 26/04/2010, ahabwa inguzanyo ya 25.000.000 Frw, ikagaragaza ko 24/02/2011 umwenda wose wari ugeze kuri 55.499.701 Frw. Ku wa 22/11/2011, nyuma ya cyamunara Banki yiyishyura 23.845.000 Frw hasigara 31.000.000 Frw. Igaragaramo kandi *historique bancaire* ya konti ya NZABARINDA Jean Pierre yo kuva ku wa 01/01/2017 kugeza ku wa 08/10/2020, ikaba igaragaza ko ku wa 28/02/2020 hishyuwe

6.000.000 Frw, ku wa 06/03/2020 hishyurwa 3.010.000 Frw, ikagaragaza ko ku wa 08/10/2020, umwenda wose wari usigaye uhwanye na 22.948.611 Frw.

[18] Imikirize y'urubanza N₀ RCOM 00017/2021/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 28/06/2021 igaragaza ko Urukiko rwategetse NZABARINDA Jean Pierre na MUSABYIMANA Spéciose kwishyura BK Plc umwenda ungana na 22.948.611 Frw.

[19] Nk'uko byagaragajwe haruguru ku wa 22/11/2011, nyuma yo guteza cyamunara ingwate NZABARINDA Jean Pierre yari yarahaye Banki ya Kigali, Banki yiyishyuye 23.845.000 Frw yavuye muri cyamunara hasigara umwenda ungana na 31.000.000 Frw, ku wa 28/02/2020 bishyura 6.000.000 Frw, no ku wa 06/03/2020 bishyura 3.010.000 Frw, hasigara umwenda ungana na 22.948.611 Frw.

[20] Urukiko rurasanga uhagarariye MUSABYIMANA Spéciose adahakana ko ingwate batanze yatejwe cyamunara kuri 25.100.000 Frw kandi ko umwenda bafashe wari ugeze kuri 55.499.701 Frw, ahubwo avuga ko ingwate yateshejwe agaciro. Rurasanga kuba ingwate yaba yarateshejwe agaciro atari byo biburanwa muri uru rubanza ahubwo haburanwa umwenda wasigaye nyuma yo guteza cyamunara ingwate. Kuba rero uhagarariye MUSABYIMANA Spéciose atagaragaza ko uwo mwenda wishyuwe, nta mpamvu yatuma badategekwa kuwishyura cyane ko gutanga ingwate no kwishyura umwenda ari ibintu bibiri bitandukanye, ariyo mpamvu ingwate igurishwa kugira ngo amafaranga avuyemo abashe kwishyura umwenda, mu gihe iguzwe amafaranga make atakwishyura umwenda wose, ubwishyu bugashakirwa no mu yindi mitungo y'ubereyemo Banki umwenda. Nk'uko n'Abahanga mu mategeko Philippe MALAURIE na Laurent AYNES babisobanura, ingwate n'uburenganzira butangwa n'itegeko, n'urubanza cyangwa n'amasezerano bushingiye ku mutungo utimukanwa cyangwa ku bwoko runaka bw'imitungo yimukanwa bwemerera ufitiwe umwenda gukurikira uwo mutungo aho waba uri hose[1]. Urukiko rurasanga rero ibivugwa n'uhagarariye MUSABYIMANA Spéciose ko nta mafaranga bagombaga gutegekwa kwishyura BK Plc kuko ingwate batanze yari ihagije kwishyura umwenda bari bayifitiye nta shingiro bifite, kuko itashoboye kwishyura uwo mwenda.

[21] Urukiko rurasanga ibyo uhagarariye MUSABYIMANA Spéciose avuga ko kuba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko gusubirishamo urubanza kwabo gufite ishingiro bisobanuye ko ibintu byasubiye uko byari bimeze, bityo ko nta mafaranga MUSABYIMANA Spéciose n'umugabo we NZABARINDA Jean Pierre bagombaga gutegekwa kwishyura BK Plc, nta shingiro byahabwa kuko kwemererwa gusubirishamo urubanza rwaciwe badahari ntaho bihuriye no kutaryozwa umwenda babereyemo Banki ya Kigali Plc, kuko nk'uko byasobanuwe haruguru, kuba atagaragaza ko bishyuye umwenda basigayemo nyuma y'uko ingwate bari baratanze itejwe cyamunara, nta mpamvu ihari yatuma badategekwa kuwishyura, cyane ko nabo bemera ko bafashe umwenda muri Banki ya Kigali, kutawishyura rero byaba ari ukwica amasezerano, bityo nta kosa Urukiko Rukuru rw'Ubucuruzi rwakoze rubategeka kwishyura BK Plc umwenda wasigaye nyuma ya cyamunara ungana na 22.948.611 Frw, iyi mpamvu y'ubujurire ikaba nta shingiro ifite.

---

[1] Philippe MALAURIE na Laurent AYNES, *Droit des sûretés*, 13ème édition, Paris 2019, pp. 428-429.

2. Kumenya niba indishyi zagenwe mu rubanza rujuririrwa zidahagije no kumenya ko Musabyimana Spéciose akwiye kugenerwa 250.000.000 Frw by'indishyi z'igihombo.

[22] Uhagarariye MUSABYIMANA Spéciose avuga ko indishyi Urukiko Rukuru rw'Ubucuruzi rwabageneye zingana na 1.000.000 Frw, akubiyemo amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, ko ayo mafaranga adahagije kubera igihombo BK Plc yabateje ubwo yatezaga cyamunara umutungo wari watanzweho ingwate ku giciro kiri hasi cyane, kandi ingwate yari yihagije mu kwishyura umwenda wose, ko kubera iyo mpamvu asaba indishyi zingana na 250.000.000 Frw z'igihombo MUSABYIMANA Spéciose n'umugabo we NZABARINDA Jean Pierre batejwe no gupfobya umutungo wari watanzweho ingwate, no kwishyuzwa amafaranga adasobanutse.

[23] Uhagarariye BK Plc avuga ko indishyi zingana na 250.000.000 Frw MUSABYIMANA Spéciose asaba nta shingiro zifite kuko avuga ko zijyanye na cyamunara kandi akaba atari yo yaregewe muri uru rubanza, ko ari nta mpamvu y'izo ndishyi mu gihe NZABARINDA Jean Pierre na MUSABYIMANA Spéciose bagifitiye BK Plc umwenda batarishyura wanemejwe n'Urukiko, ko kandi kutishyura umwenda bahawe byateje BK Plc igihombo, bakaba batakongererwaho indishyi, ko n'indishyi Urukiko Rukuru rw'Ubucuruzi rwabageneye zakurwaho, kuko nta kosa Banki yabakoreye.

UKO URUKIKO RUBIBONA

[24] Ingingo ya 111, igika cya 1, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ibikurikira: Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Naho ingingo ya 3, igika cya mbere y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[25] Urukiko rurasanga indishyi zingana na 250.000.000 Frw MUSABYIMANA Spéciose asaba kubera igihombo we n'umugabo we NZABARINDA Jean Pierre batejwe no gupfobya umutungo watanzweho ingwate, ukagurishwa ku giciro kiri hasi cyane nta shingiro zifite, kuko nk'uko byasobanuwe haruguru, muri uru rubanza ntabwo haburanwa agaciro k'ingwate cyangwa se gutesha agaciro cyamunara kubera igiciro cyatanzwe ari gito ahubwo haraburanwa umwenda MUSABYIMANA Spéciose afitiye BK Plc, bikaba rero byumvikana ko ntaho izi indishyi zisabwa zaba zishingiye.

[26] Urukiko rurasanga ibyo uhagarariye MUSABYIMANA Spéciose avuga ko 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka bagenewe n'Urukiko Rukuru rw'Ubucuruzi adahagije kubera igihombo BK Plc yabateje, nta shingiro byahabwa kuko atagaragaza ibimenyetso byerekana ko ayo batakaje bakurikirana urubanza arenze ayo bagenewe n'Urukiko mu bushishozi bwarwo. Bityo iyi mpamvu y'ubujurire nta shingiro ifite.

B. UBUJURIRE BWURIRIYE KU BUNDI BWA BK Plc

3. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kugenera BK Plc inyungu zingana na 31.913.744 Frw zikomoka ku mwenda remezo utarishyuwe zibazwe kugera ku wa 02/05/2014

[27] Uhagarariye BK Plc avuga ko mu gika cya 14 n'icya 15 by'urubanza rujuririrwa, Urukiko Rukuru rw'Ubucuruzi rwemeje ko BK Plc itahabwa inyungu, kubera ko urubanza N₀ RCOM 0184/12/HCC rwateshejwe agaciro ibintu bigasubira uko byari biri, ko BK Plc ari yo yiteje igihombo ku mpamvu yuko ntacyo yigeze ikora mu gukurikirana umwenda wari usigaye, ari yo mpamvu itagombaga gukomeza kubara inyungu mu gihe cyose itagaragaje ikimenyetso cy'uko kudakurikirana uwo mwenda byatewe n'abayibereyemo umwenda. Ko ibyemejwe n'Urukiko atari ko bimeze, kubera ko nyuma ya cyamunara yabaye yo ku wa 11/10/2011, ikemezwa ku wa 01/11/2011, amafaranga akagera kuri konti ku wa 22/11/2011, Banki yatanze ikirego ku wa 05/09/2012 mu rubanza N₀ RCOM 0184/12/HCC isaba kwishyurwa 31.938.611 Frw hiyongereyeho n'inyungu za 10.160.503 Frw, zibazwe kugera ku wa 18/04/2012, ko ibyo byose bigaragazwa na *historique* yatanzwe na Banki, ko kuba Urukiko rwarakiriye ugusubirishamo urubanza, bidahagarika ibarwa ry'inyungu mu gihe umwenda utarishyurwa.

[28] Avuga kandi ko ashingiye ku bikubiye mu gika cya 4 kugeza ku gika cya 8 by'urubanza rujuririrwa, ku ngingo ya 152 y'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ku ngingo ya 64 y'itegeko nº 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, no ku ngingo ya 112 igika cya mbere agace ka 2 y'Itegeko n° 47/2017 ryo ku wa 23/09/2017 rigena imitunganyirize y'imirimo y'Amabanki, iteganya ko inyungu zikomoka ku mwenda zitagomba kurenga umwenda remezo, asaba Urukiko rw'Ubujurire gutegeka MUSABYIMANA Spéciose kwishyura umwenda ungana na 54.862.355 Frw akubiyemo 22.948.611 Frw y'umwenda remezo nyuma yo ku wa 06/03/2020 kongeraho 31.913.744 Frw y'inyungu zibazwe kugeza ku wa 02/05/2014 nk'uko bigaragazwa na *historique* ya Banki, zibariwe ku mwenda remezo wa 31.958.611 Frw wo ku wa 22/11/2011, nyuma yo guteza cyamunara ingwate kuko 9.010.000 Frw yishyuwe izo nyungu zaramaze kubarwa.

[29] Uhagarariye MUSABYIMANA Spéciose avuga ko inyungu BK Plc isaba nta shingiro zifite kuko itakwitwaza amakosa yayo ngo igire icyo iyasabisha.

UKO URUKIKO RUBIBONA

[30] Ingingo ya 140 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano iteganya ibikurikira: "Nta ndishyi zishobora gutangwa mu gihe uwatewe igihombo yashoboraga kucyirinda nta zindi ngaruka, umutwaro cyangwa igisebo bimuteye."

[31] Dosiye y'urubanza igaragaza ko amafaranga yavuye muri cyamunara yageze kuri konti ya NZABARINDA Jean Pierre ku wa 22/11/2011, ko Banki yatanze ikirego mu Rukiko Rukuru rw'Ubucuruzi ku wa 05/09/2012, isaba kwishyurwa Umwenda remezo wa 31.958.611 Frw, inyungu za 10.160.503Frw zabazwe ku wa 18/4/2012 n'amafaranga y'ibigenda ku rubanza. Igaragaza ko urubanza N₀ RCOM 0184/12/HCC rwaburanishijwe MUSABYIMANA Spéciose n'umugabo we NZABARINDA Jean Pierre badahari, barusubirishamo ku wa 02/06/2020, mu rubanza rubanziriza urundi mu rubanza N₀ RCOM 00017/2021/HCC rwaciwe ku wa 22/03/2021, Urukiko Rukuru rw'Ubucuruzi rwemeza ko gusuzubirishamo urubanza kwabo gufite ishingiro.

[32] Urukiko rurasanga nta kimenyetso BK Plc itanga cyerekana ko MUSABYIMANA Spéciose n’umugabo we NZABARINDA Jean Pierre bamenyeshejwe umwenda wasigaye nyuma y’aho ingwate bari baratanze itejwe cyamunara. Rurasanga kandi n’urubanza N$_o$ RCOM 0184/12/HCC BK Plc ishingiraho ivuga ko yaregeye uwo mwenda rwaraburanishijwe abo yishyuza badahari kandi bakaba batarigeze barumenyeshwa rukimara gucibwa. Kuba rero BK Plc itaramenyesheje NZABARINDA Jean Pierre n’umwishingizi we MUSABYIMANA Spéciose ko hari umwenda wasigaye nyuma ya cyamunara, no kuba baremenye urwo rubanza muri 2020 hashize imyaka umunani (8) ruciwe bigaragaza ko BK Plc itakoze ibyo yagombaga gukora, ikaba ariyo igomba kubyirengera aho kubishyira ku mutwe wa NZABARINDA Jean Pierre na MUSABYIMANA Spéciose, bityo ikaba itagomba guhabwa inyungu isaba.

[33] Iby’uko Banki itagomba gukomeza kubara inyungu mu gihe itakoze ibyo yagombye gukora ni nako Urukiko rw’Ikirenga rwabinonye mu rubanza N$_o$ RCOMAA 0020/15/CS, haburana Arlcom Ltd na UWAMAHORO Florent de la Paix na ECOBANK RWANDA Ltd, aho urwo Rukiko rwasobanuye ko nyuma yo gusesa amasezerano Banki yagombaga guhita iteza cyamunara ingwate yari yahawe , ko kuba itarabikoze itagombaga gukomeza kubara inyungu, ikaba igomba kwirengera ingaruka z’uburangare bwayo, kuko biba ari ugutuma uwishyuzwa akomeza kubarirwa inyungu z’ikirenga kandi bikamutera igihombo ku makosa atari aye.[2] Ni nako uru Rukiko rwabibonye mu rubanza Nº RCOMAA 00007/2020/CA rwa BRD Plc iburana na RUTAGANDA Viateur hamwe na UWANTEGE Odette, aho rwasobanuye ko kuba Banki yarahisemo kuregera Urukiko nyuma y’imyaka itatu, nta mpamvu inyungu zari gukomeza kubarwa ngo zijye ku mutwe w’abayibereyemo umwenda, ko kuba Banki itarabyitayeho ngo ibikurikirane, nta ruhare RUTAGANDA Viateur na UWANTEGE Odette babifitemo ku buryo yababarira inyungu, ahubwo akaba ariyo igomba kubyirengera.

4. Kumenya niba Urukiko Rukuru rw’Ubucuruzi rwaragombaga gutegeka BK Plc kwishyura NZABARINDA Jean Pierre na MUSABYIMANA Spéciose 1.000.000 Frw y’ikuriranarubanza n’igihembo cya Avoka no kubasubiza 40.000 Frw.

[34] Uhagarariye BK Plc ashingira ku ngingo ya 9 n’iya 111 z’Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, avuga ko Urukiko Rukuru rw’Ubucuruzi rutagombaga kwemeza umwenda NZABARINDA Jean Pierre na MUSABYIMANA Spéciose bagomba kwishyura BK Plc, ngo hanyuma ruhindukire ruyitegeke kugira ibyo yishyura. Asaba Urukiko rw’Ubujurire kwemeza ko indishyi Urukiko rwategetse ko BK Plc ibishyura ntaho zishingiye, kuko kuba gusubishamo urubanza kwabo kwarakiriwe bitavuga ko uwasubirishijemo urubanza aba arutsinze, ko ahubwo ikiba kigamijwe ari uko impande zombi zongera zikaburana urubanza bundi bushya. Bityo ko kuba NZABARINDA Jean Pierre na MUSABYIMANA Spéciose baratsinzwe urubanza bagategekwa kwishyura BK Plc umwenda bari bayibereyemo, Urukiko rutagombaga kuyitegeka kubaha indishyi.

[35] Uhagarariye MUSABYIMANA Spéciose avuga ko indishyi bagenewe zifite ishingiro, ko ahubwo zidahagije, akaba yarasabye ko zongerwa.

---

[2] Reba igika cya 37 cy’urubanza N$_o$ RCOMAA 0020/15/CS rwaciwe ku wa 21/05/2018, haburana UWAMAHORO Florent de la Paix & Arlcom Ltd na ECOBANK RWANDA Ltd.

UKO URUKIKO RUBIBONA

[36] Ingingo ya 111 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi yibukijwe haruguru iteganya ibikurira: *"Ikirego cy'amafaranga y'ikurikiranarubanza ni ikirego gishamikira ku kirego cy'iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".* Ingingo ya 152, igika cya mbere, y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 rimaze kuvugwa ivuga ko uregwa mu rukiko rujuririrwa ashobora na we kugira ibyo asaba yiregura.

[37] Urukiko rurasanga amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ari amafaranga agenerwa uwatsinze urubanza hagamijwe kumusubiza ibyo yarutakajeho, kuba rero NZABARINDA Jean Pierre na MUSABYIMANA Spéciose barasubirishijemo urubanza N₀ RCOM 0184/12/HCC, ikirego cyabo kikakirwa ariko Urukiko rugasanga hari umwenda babereyemo BK Plc uhwanye na 22.948.611 Frw bagomba kuyishyura rusanga nta mpamvu BK Plc yari gutegekwa kubishyura amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko itigeze itsindwa urubanza ahubwo ikigaragara ni uko ikirego cyayo cyahawe ishingiro, bityo 1.000.000 y'ikurikiranarubanza n'igihembo cya Avoka Urukiko Rukuru rw'Ubucuruzi rwategetse BK Plc kwishyura NZABARINDA Jean Pierre na MUSABYIMANA Spéciose avanweho, kimwe na 40.000 Frw y'ingwate y'igarama batanze barega nayo avanweho.

5. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro.

[38] Uhagarariye BK Plc ashingiye ku ngingo ya 111, n'iya 152 z'Itegeko n° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku ngingo ya 34 y'amabwiriza n° 01/2014 agenga ibihembo mbonera by'Abavoka, asaba Urukiko rw'Ubujurire gutegeka MUSABYIMANA Spéciose kwishyura 1.000.000 Frw y'ikurikiranarubanza na 2.000.000 Frw y'igihembo cy'Avoka akubiyemo ayo itahawe ku rwego rwa mbere nayo isaba mu bujurire, kubera gusiragizwa mu nkiko ku maherere.

[39] Uhagarariye MUSABYIMANA Spéciose yiregura avuga ko amafaranga asabwa na BK Plc nta shingiro afite, kuko itakwitwaza amakosa yayo yo gupfobya ingwate ifite agaciro ka 300.000.000 Frw, ngo iyigurishe ku mafaranga atageze kuri 1/10 cyayo hanyuma ngo ibirengeho isabe n'indishyi, bityo ko hashingiwe ku ihame "Nemo Audutur Propriam Turpitudinem allegans" BK Plc ikwiye kwirengera amafaranga y'igihembo cya Avoka n'ikurikiranarubanza kuko ari yo nyirabayazana w'uru rubanza.

UKO URUKIKO RUBIBONA

[40] Urukiko rurasanga BK Plc itagomba kugenerwa amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka isaba kuko mu byo yaregeye mu bujurire bwuririye ku bundi ifite ibyo yatsindiye n'ibyo yatsindiwe.

III. ICYEMEZO CY’URUKIKO

[41] Rwemeje ko ubujurire bwa Musabyimana Spéciose nta shingiro bufite.

[42] Rwemeje ko ubujurire bwuririye ku bundi bwatanzwe na Bank of Kigali Plc bufite ishingiro kuri bimwe.

[43] Rwemeje ko imikirize y’urubanza N$_o$ RCOM 00017/2021/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 28/06/2021, ihindutse gusa kuri 1.000.000 Frw y’ikurikiranarubanza n’igihembo cya Avoka na 40.000 Frw y’igarama Urukiko Rukuru rw’Ubucuruzi rwategetse Bank of Kigali Plc kwishyura Nzabarinda Jean Pierre na Musabyimana Spéciose avanweho.

[44] Ruvuze ko amagarama yatanzwe ahwanye n’ibyakozwe mu rubanza.